

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN WATERLOO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR20-1012-CJW

DOUGLAS JOHN BUTTIKOFER, JR.,

TRANSCRIPT OF
PLEA TAKING

Defendant.

_____/

The Plea Taking held before the Honorable Mark A. Roberts, Magistrate Judge of the United States District Court for the Northern District of Iowa, at the Federal Courthouse, 111 Seventh Avenue Southeast, Cedar Rapids, Iowa, February 2, 2021, commencing at 9:58 a.m.

APPEARANCES

For the Plaintiff: ELIZABETH DUPUICH, ESQ.
Assistant United States Attorney
111 Seventh Avenue Southeast
Cedar Rapids, IA 52401

For the Defendant: MARK A. EISENBERG, ESQ.
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1 (The following transcript was prepared from an
2 audio recording.)

3 * * * *

4 THE COURT: Please be seated. The case before
5 the Court is United States versus Douglas John
6 Buttikofer, Junior, Number 20-CR-1012. The United States
7 is represented by Assistant United States Attorney Liz
8 Dupuich. The defendant is here in person, and he's
9 represented by his attorney, Mark Eisenberg, who appears
10 by video for our hearing today. The matter comes on for
11 a change of plea pursuant to Rule 11 of the Federal Rules
12 of Criminal Procedure.

13 Mr. Buttikofer, I suppose you knew before the
14 hearing today that Mr. Eisenberg was going to appear by
15 telephone -- I'm sorry, by video for the hearing today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Is that acceptable to you?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. Is there any objection from
20 the government?

21 MS. DUPUICH: No, Your Honor.

22 THE COURT: Mr. Buttikofer, you've been charged
23 by a superseding indictment that has three counts. Count
24 1 charges you with distribution of child pornography.
25 Count 2 charges you with receipt of child pornography.

1 And Count 3 charges you with accessing child pornography.

2 Have you received a copy of that superseding indictment?

3 THE DEFENDANT: Yes, Your Honor, I have.

4 THE COURT: And have you had a full opportunity

5 to discuss these charges in detail with Mr. Eisenberg?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I understand that you intend to
8 plead guilty to Count 3 this morning. Is that correct?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: You need to understand that I'm a
11 United States magistrate judge. And your case has also
12 been assigned to a United States District Court judge.
13 You have the right to have a district court judge preside
14 over a guilty plea proceeding. I can preside over the
15 hearing this morning but only if you voluntarily consent.
16 Is it agreeable with you that I preside over the hearing
17 today?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Let the record also reflect that at
20 document number 115 of the Court's file is a written
21 consent to proceed before a magistrate judge. It appears
22 to be signed by Mr. Eisenberg and Mr. Buttikofer. So,
23 Mr. Buttikofer, with your consent, I will preside over
24 the hearing today. And during our hearing, I need to ask
25 you some questions. And your answers have to be under

1 oath. So at this point I'm going to ask you to please
2 raise your right hand so I can administer the oath.

3 DOUGLAS BUTTIKOFER, JR., DEFENDANT, SWORN

4 THE COURT: You're now under oath. If you
5 knowingly lie or make a false statement, the government
6 could charge you with the crimes of perjury or making a
7 false statement. And if you're convicted of one of those
8 offenses, you could be sentenced to a period of
9 imprisonment and fined. Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: It's important that you answer my
12 questions truthfully because if you were to lie or make a
13 false statement today, the government could use those
14 very statements against you to charge you with those
15 offenses. Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Now, the first few questions I have
18 for you are really just to make sure that you're in a
19 mental state today where you can voluntarily and
20 knowingly enter a guilty plea.

21 Would you please state your full name.

22 THE DEFENDANT: Douglas John Buttikofer,
23 Junior.

24 THE COURT: How old are you, Mr. Buttikofer?

25 THE DEFENDANT: Forty years old.

1 THE COURT: How far have you gone in school?

2 THE DEFENDANT: Some college.

3 THE COURT: Do you have any difficulty reading
4 or understanding the English language?

5 THE DEFENDANT: No, I do not, Your Honor.

6 THE COURT: Have you ever suffered from
7 depression, anxiety, or any other mental illness?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Can you tell me a little bit about
10 that?

11 THE DEFENDANT: Yeah. I mean, I have
12 definitely dealt with some anxiety and depression and
13 some things, you know.

14 THE COURT: Okay. And I think even in the
15 course of your proceedings before the Court here in this
16 matter you might have since been examined by some mental
17 health professionals. Is that correct?

18 THE DEFENDANT: Yes, Your Honor, it is.

19 THE COURT: Okay. The only reason I'm asking
20 for it, I want to make sure that there's nothing about
21 your mental health condition that you think would
22 interfere with your ability to understand these
23 proceedings here today. Do you think there's something
24 about your mental health condition that would interfere
25 with your ability to understand what's going on?

1 THE DEFENDANT: Not to my knowledge, Your
2 Honor.

3 THE COURT: Okay. Mr. Eisenberg, I know you
4 were probably involved in arranging for some of those
5 examination and know something about the defendant's
6 mental health history. Is there something about the
7 defendant's mental health that would indicate to you that
8 he would not be competent to understand what's going on
9 here today?

10 MR. EISENBERG: No, Your Honor.

11 THE COURT: Mr. Buttikofer, have you ever used
12 illegal drugs or abused alcohol?

13 THE DEFENDANT: Yes, Your Honor, I have.

14 THE COURT: Do you think your prior drug or
15 alcohol use might affect your ability to understand the
16 proceedings here today?

17 THE DEFENDANT: No, Your Honor, I do not.

18 THE COURT: Are you taking any medication or
19 prescription drugs for any mental or physical condition?

20 THE DEFENDANT: Yes, Your Honor. Right now at
21 the jail they give me melatonin to help me sleep at
22 night, and then they also give me -- it's -- I can't
23 think of the name right now, but it's like a generic
24 Lexapro which is for, I believe, depression and anxiety.

25 THE COURT: Okay. Do you think that would

1 interfere with your ability to understand these
2 proceedings here today?

3 THE DEFENDANT: I do not think so, Your Honor,
4 no.

5 THE COURT: Have you been prescribed any
6 medication that you're not taking?

7 THE DEFENDANT: I mean, they've given me
8 like -- we have to fill out these forms to get other
9 stuff, but I don't think -- I mean, the short answer is
10 yes. I don't think it's anything that affected me, like
11 fiber powder and things like that.

12 THE COURT: Okay. So I just wanted to be sure
13 of that. You're on the same track as me. There's
14 nothing you should be taking that you think would -- the
15 absence of it would interfere with your ability to
16 understand these proceedings. Do you agree with that?

17 THE DEFENDANT: I do, Your Honor.

18 THE COURT: Do you know of any reason that you
19 might have difficulty understanding these proceedings?

20 THE DEFENDANT: I'm -- what --

21 THE COURT: It's kind of an open-ended
22 question. I just want to know if you can think of
23 anything else that we haven't talked about that might
24 interfere with your ability to understand these
25 proceedings like you've had a head injury or you're not

1 feeling well or something like that.

2 THE DEFENDANT: Oh, no. Nothing like that,
3 Your Honor.

4 THE COURT: It's important that you do
5 understand everything that we do today. So if there is
6 something that you don't understand, would you please
7 stop me and let me know?

8 THE DEFENDANT: Definitely.

9 THE COURT: Mr. Eisenberg, do you have any
10 reason to believe that Mr. Buttikofer is not competent to
11 enter a guilty plea?

12 MR. EISENBERG: No, sir.

13 THE COURT: I need to talk to you now,
14 Mr. Buttikofer, about all the rights you'll be giving up
15 if you do plead guilty this morning.

16 First, you have the right to have a lawyer help and
17 represent you during every stage of this case. In this
18 case you've retained Mr. Eisenberg to represent you. And
19 if you could no longer afford his services and you still
20 wanted to go to trial and fight these charges, the Court
21 would appoint an attorney to represent you all the way
22 through that trial at no expense to you. So your
23 inability to afford an attorney shouldn't factor in to
24 your considerations about whether you should plead guilty
25 here today. Do you understand your right to an attorney?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Have you been generally satisfied
3 with the services provided by Mr. Eisenberg?

4 THE DEFENDANT: Definitely, Your Honor.

5 THE COURT: You also have the right to a speedy
6 and public trial before a jury of 12 people selected from
7 a cross-section of the community. Both you and
8 Mr. Eisenberg would have a role in selecting the people
9 who would serve on that jury. And those jurors would
10 swear under oath to try your case fairly based only on
11 the evidence admitted at trial and based on the law as
12 given to them by the judge.

13 Any verdict by the jury would have to be unanimous
14 which means that all 12 people on the jury would have to
15 agree on the verdict. Do you understand your right to a
16 jury trial?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: There's also a presumption of
19 innocence, and that means if the case went to trial, the
20 judge would tell the jury that you're presumed innocent
21 of these charges, and that presumption of innocence could
22 only be overcome if the government produced evidence that
23 proved your guilt beyond a reasonable doubt. And, in
24 fact, the judge would tell the jury that the presumption
25 of innocence alone could be enough for you to be found

1 not guilty. Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: You also have the right to
4 confrontation. That means if the case went to trial the
5 government would have to call its witnesses here in open
6 court. You would have a right to see those witnesses,
7 and they could see you. You wouldn't have to confront
8 the government's witnesses if you didn't want to, but if
9 you wanted to challenge their testimony, you could do so
10 by having Mr. Eisenberg cross-examine them. But if you
11 plead guilty here today, Mr. Buttikofer, you'll be giving
12 up your right to confront witnesses on these charges. Do
13 you understand that?

14 THE DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: You also have the right to present
16 a defense. In a criminal case like this one, the burden
17 of proof is always on the government, and it would never
18 shift to you. So if your case went to trial, you
19 wouldn't have to produce any evidence if you didn't want
20 to. But if you wanted to present a defense, you could.
21 For example, you could call witnesses, or you could offer
22 exhibits into evidence. And if you couldn't afford to
23 have witnesses subpoenaed for that trial or you couldn't
24 afford to have witnesses travel here to the courthouse, I
25 would make the government pay those expenses for you.

1 But again, Mr. Buttikofer, if you plead guilty here
2 this morning, you'll be giving up your right to present a
3 defense to these charges. Do you understand that?

4 THE DEFENDANT: I do understand, Your Honor.

5 THE COURT: Finally, you have the right to
6 remain silent. You could testify at your trial if you
7 wanted to, but you wouldn't have to testify. And nobody
8 could make you testify. And if you chose not to testify,
9 the prosecutor wouldn't say anything about that decision
10 to the jury, and the judge would instruct the jurors that
11 they could not take into account in any way or, frankly,
12 even discuss among themselves the fact that you did not
13 testify in arriving at the verdict. Do you understand
14 that?

15 THE DEFENDANT: Yes, I do, Your Honor.

16 THE COURT: In summary, Mr. Buttikofer, if you
17 plead guilty here today, there will be no trial. You
18 will be found guilty based on your plea just as if there
19 had been a trial and just as if a jury had deliberated
20 and returned a guilty verdict against you. Do you
21 understand that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Now, before I can recommend that
24 the district court accept your guilty plea, I need to be
25 satisfied that you are, in fact, guilty as charged in the

1 superseding indictment. And for you to be found guilty
2 of accessing child pornography as charged in Count 3 of
3 the superseding indictment, the government would have to
4 prove 4 things beyond a reasonable doubt. I'm going to
5 go over those four things with you now, Mr. Buttikofer.
6 In fact, what I'll do is I'll read each of them twice.
7 The first time I'll read one, I'll just make sure that
8 you understand it. Then I'll read it again and ask you
9 if it's true.

10 So the first thing the government would have to
11 prove is that between in or about February 2020 and March
12 2020 in the Northern District of Iowa you knowingly
13 accessed with intent to view one or more visual
14 depictions of child pornography. Do you understand the
15 first thing the government would have to prove?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Is it true that between in or about
18 February 2020 and March 2020 in the Northern District of
19 Iowa you knowingly accessed with intent to view one or
20 more visual depictions of child pornography?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: The second thing the government
23 would have to prove is that you knew the visual depiction
24 or depictions were of a minor engaging in sexually
25 explicit conduct. Do you understand the second thing the

1 government would have to prove?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Is it true that you knew the visual
4 depiction or depictions were of a minor engaging in
5 sexually explicit conduct?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: The third thing the government
8 would have to prove is that the visual depiction or
9 depictions were transported in or affecting interstate
10 commerce or the visual depiction or depictions were
11 transported using a means or facility of interstate or
12 foreign commerce. Do you understand the third thing the
13 government would have to prove?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Is it true that the visual
16 depiction or depictions were transported in or affecting
17 interstate or foreign commerce or the visual depiction or
18 depictions were transported using a means or facility of
19 interstate or foreign commerce? Is that true?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Then finally, the government would
22 have to prove that one or more of the visual depictions
23 in question involved a minor who you knew to be
24 prepubescent or not -- or yet to attain 12 years of age.
25 Do you understand the fourth thing the government would

1 have to prove?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Is it true that one or more of the
4 visual depictions in question involved a minor who you
5 knew to be prepubescent or yet to attain 12 years of age?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Now, the parties have entered into
8 a plea agreement in this case which is in the form of a
9 January 19, 2021, letter to Mr. Eisenberg from
10 Ms. Dupuich. And it's been marked as Government's
11 Exhibit 1. Is that being offered into evidence at this
12 time, Ms. Dupuich?

13 MS. DUPUICH: Yes, Your Honor.

14 * * * *

15 (Government Exhibit 1 was offered.)

16 * * * *

17 THE COURT: Any objection, Mr. Eisenberg?

18 MR. EISENBERG: No, Your Honor, but there are
19 some changes that Miss Dupuich and I have discussed that
20 need to be added to that.

21 THE COURT: Okay. I did have some questions
22 about it myself. First of all, there are a number of
23 blanks that have not been initialed as typically I see.
24 Can you explain, Ms. Dupuich?

25 MS. DUPUICH: Thank you, Your Honor. I just

1 noticed on page 3 of the plea agreement it looks like the
2 defendant initialed paragraph 8 but then failed to
3 initial subsections A, B, and C. I'm sure that was just
4 inadvertent. There was a lot of difficulty with the
5 defense attorney being in Madison. We were attempting to
6 facilitate this through the jail. So if it would be
7 acceptable to Mr. Eisenberg, I think perhaps the easiest
8 thing would be for the defendant to just initial A, B,
9 and C and date them now.

10 THE COURT: Okay. Mr. Ei --

11 MR. EISENBERG: That's fine. I'm sorry.

12 THE COURT: I heard you say that's fine,
13 Mr. Eisenberg. Have you had an opportunity to discuss
14 the -- I guess that's an omission of those initials by
15 Mr. Buttikofer with him?

16 MR. EISENBERG: We have, Judge. We've gone
17 over that, and it's also the same thing on page 4 on each
18 of the guideline issues.

19 THE COURT: Okay. So, Mr. Buttikofer, what
20 your attorney's telling me, what the prosecutor is
21 telling me is there are some blanks on the plea agreement
22 that are not initialed by you, that that was just
23 inadvertent and you meant to initial those. Is that --
24 do you understand that, Mr. Buttikofer?

25 THE DEFENDANT: Yes, Your Honor. I just

1 thought I'd just do two -- do each number. But yeah.

2 THE COURT: You need to do the lettered
3 paragraphs also, and you're going to do that at this
4 time?

5 THE DEFENDANT: Okay.

6 MS. DUPUICH: With the Court's permission, can
7 I -- can I bring this to him?

8 THE COURT: Yes. Please do.

9 MS. DUPUICH: Okay. Thank you. Do you have a
10 pen?

11 THE DEFENDANT: No. One thing I wanted to ask
12 about --

13 MS. DUPUICH: Do you want a minute maybe to ask
14 Mr. Eisenberg?

15 THE DEFENDANT: Yeah. Can I talk to him?

16 MS. DUPUICH: Could he just have a minute to
17 speak to Mr. Eisenberg about one question he had about
18 one of the paragraphs?

19 THE COURT: Mr. Coberly -- I don't know how
20 we're going to do that with -- to preserve any
21 attorney-client privilege. I suppose we could ask
22 Ms. Dupuich to leave the room.

23 MS. DUPUICH: Sure. I'd be happy to.

24 MR. EISENBERG: Is there a breakout room you
25 can put us in, Judge?

1 THE COURT: No, there's not a breakout room
2 that I could put the defendant in. If -- why don't we
3 ask Ms. Dupuich to leave the room and if she has an agent
4 there. Then it's just going to be court personnel and
5 the marshal's service there. And I can order the court
6 personnel and myself not to disclose any attorney-client
7 privilege. Alternatively, I can leave the room too if
8 you insist, Mr. Eisenberg, if you'd rather.

9 MR. EISENBERG: I'm not insisting. It's up to
10 Mr. Buttikofer what he wants, Judge.

11 THE DEFENDANT: Yeah. It's okay with me,
12 Judge, if you're here.

13 THE COURT: All right. Why don't you ask your
14 question then of Mr. Eisenberg, and the two of you can
15 discuss it.

16 (Sealed Excerpt Number 1 is contained in a separate,
17 sealed volume.)

18 THE COURT: Okay. And then I'm going to order
19 that portion of the transcript sealed to preserve the
20 attorney-client privilege, and we can request that the
21 government return to our hearing.

22 MR. EISENBERG: Thank you.

23 THE DEFENDANT: Appreciate that, Your Honor.

24 THE COURT: You're welcome.

25 I have a number of questions for Mr. Buttikofer

1 about that fully executed plea agreement, so maybe we can
2 just leave that with him until we've completed our
3 questioning.

4 MS. DUPUICH: Thank you, Your Honor.

5 THE COURT: Thank you. Mr. Buttikofer, do you
6 have a fully executed now copy of the plea agreement in
7 front of you?

8 THE DEFENDANT: Yes, Your Honor, I do.

9 THE COURT: Could you turn to the very last
10 page of the plea agreement with me, please?

11 THE DEFENDANT: Sure.

12 THE COURT: I'm sorry. That's where
13 Mr. Eisenberg's signature is. I guess it's the second to
14 the last page. You'll see that someone's typed your name
15 there and put a signature line. On top of that signature
16 line I see a signature. Is that your signature?

17 THE DEFENDANT: Yes, Your Honor, it is.

18 THE COURT: Did you review the plea agreement
19 in its entirety before you signed it?

20 THE DEFENDANT: Did I read the -- yes, I did,
21 Your Honor.

22 THE COURT: The whole thing before you signed
23 it; right?

24 THE DEFENDANT: Yep, couple times.

25 THE COURT: By signing it, did you intend to

1 indicate that you read, understood, and agreed to the
2 terms of the plea agreement?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Now, I don't need to know what you
5 and Mr. Eisenberg may have discussed, but did you have
6 plenty of time to talk with him about the plea agreement
7 before you signed it?

8 THE DEFENDANT: Yes, Your Honor, several times.

9 THE COURT: Did you have plenty of opportunity
10 to ask him questions about the plea agreement?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Did he answer all of your questions
13 to your satisfaction?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: As we sit here today, do you have
16 any questions whatsoever about the plea agreement you
17 reached with the government?

18 THE DEFENDANT: No. I guess -- well, the one
19 question that I asked Mr. Eisenberg already. I had one
20 other question, you know, I mean. I been -- I have my
21 own copy too. I've been reading it quite a -- quite a
22 bit.

23 THE COURT: Okay. And we don't really have an
24 opportunity for you to ask him a privileged question
25 while the government's still here in the courtroom with

1 us. So if you want to ask him a question now, we'll ask
2 Ms. Dupuich to leave the courtroom again.

3 THE DEFENDANT: I'm sorry.

4 THE COURT: And then we'll give you an
5 opportunity to ask Mr. Eisenberg your question.

6 THE DEFENDANT: Your -- it wasn't really a
7 question like that. It's just between me and him.

8 THE COURT: Well, if the government's here,
9 they're going to hear what you have to say, and then that
10 information's not going to be privileged. And so that's
11 a privilege I'm sure Mr. Eisenberg would want to protect,
12 and he can't read your mind, and he can't know what
13 you're going to ask.

14 THE DEFENDANT: Okay. Okay. I'm sorry.

15 THE COURT: So if you're going to ask him a
16 question that's about the plea agreement, you want to get
17 it answered outside of the government's hearing, then
18 we're going to ask the government to leave again.

19 THE DEFENDANT: All right. I'm sorry. It's
20 the last one, though.

21 MS. DUPUICH: It's no problem.

22 THE COURT: Don't be sorry, and don't be shy.
23 We want to make sure you get all your questions answered
24 before we proceed.

25 (Sealed Excerpt Number 2 is contained in a separate,

1 sealed volume.)

2 THE COURT: Okay. We'll ask the government
3 then to return to our hearing.

4 MR. EISENBERG: Thank you, Judge.

5 THE COURT: You're welcome.

6 And just to confirm, Mr. Buttikofer, now that the
7 government has returned to our hearing, do you have any
8 more questions whatsoever about the plea agreement you
9 reached with the government?

10 THE DEFENDANT: No, Your Honor, no further
11 questions.

12 THE COURT: The plea agreement does call for
13 the court to dismiss Counts 1 and 2 of the superseding
14 indictment. And if the district court judge does not
15 agree to dismiss those charges, you'll be allowed to
16 withdraw your guilty plea if you wish. Do you understand
17 that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: If you could turn with me, please,
20 then, Mr. Buttikofer, in the plea agreement to page 3, we
21 were here a few minutes ago. It's the section called
22 Stipulation of Facts. And it begins with paragraph 8.
23 And below it are subparagraphs A through E which next to
24 each of those paragraphs now I believe you have
25 initialed. Are those your initials in each of those

1 places?

2 THE DEFENDANT: Yes, Your Honor, they are.

3 THE COURT: By placing your initials there to
4 ind -- did you intend to indicate that the information
5 contained in those paragraphs is true and correct?

6 THE DEFENDANT: Yes, Your Honor, it is.

7 THE COURT: In fact, throughout the plea
8 agreement, wherever I see paragraphs that have blanks, I
9 see those same initials. Are those your initials in each
10 of those places?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And did you place your initials
13 there to indicate that you read, understood, and agreed
14 to the terms of each of those paragraphs?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Now, some of those initials you put
17 there today after you already signed the plea agreement.
18 I understand that was somewhat inadvertent, that you
19 didn't mean to leave those out, you didn't mean to omit
20 those. Do you understand that that's not a technicality
21 that affects the effect of this plea agreement, that
22 you're bound by this entire plea agreement including the
23 provisions that you initialed this morning?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Ms. Dupuich, was any -- or did I

1 accurately describe the elements of the charge?

2 MS. DUPUICH: Yes, Your Honor.

3 THE COURT: Have I established an adequate
4 factual basis for the guilty plea?

5 MS. DUPUICH: Yes, Your Honor.

6 THE COURT: Mr. Eisenberg, do you think that
7 Mr. Buttikofer understands the elements of the charge
8 against him?

9 MR. EISENBERG: Yes, sir.

10 THE COURT: Have I established an adequate
11 factual basis for the plea?

12 MR. EISENBERG: Yes, sir.

13 THE COURT: Have you had full access to the
14 government's discovery materials?

15 MR. EISENBERG: We have.

16 THE COURT: Do you believe they support a
17 factual basis for Mr. Buttikofer's guilty plea?

18 MR. EISENBERG: Yes, sir.

19 THE COURT: Do you know of any possible defense
20 to the charge which you haven't considered and discussed
21 with Mr. Buttikofer?

22 MR. EISENBERG: We have gone round and round
23 about possible defenses to all the counts, Judge, so the
24 answer is we've discussed it. I don't believe there's
25 anything else that I would have used to discuss with

1 Mr. Buttikofer.

2 THE COURT: Very well. Mr. Buttikofer, at this
3 point I need to talk to you about the penalties which
4 apply in this case. I'm sure that's something you've
5 talked to Mr. Eisenberg about. And I know that it's
6 covered in the plea agreement. I just want to be sure
7 that you understand what you're facing for the purpose of
8 our hearing today.

9 Count 3 of the indictment is punishable by the
10 following maximum penalties: First, not more than 20
11 years' imprisonment without the possibility of parole; a
12 fine of not more than \$250,000; a mandatory special
13 assessment of \$100; and a term of supervised release of
14 at least 5 years to life.

15 You should also understand that unless the district
16 court judge finds you to be indigent, an additional
17 mandatory special (sic) of \$5,000 will be imposed.

18 You should also understand that a special assessment
19 of up to \$17,000 may be imposed. Do you understand the
20 maximum penalties which may be imposed in this case?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: At the time of your sentencing the
23 judge will perform a calculation under the federal
24 sentencing guidelines issued by the United States
25 Sentencing Commission, and that will result in what's

1 called an advisory guideline range. That's simply a
2 range of months within which the sentencing commission
3 suggests that the judge should sentence you based on your
4 crime and your background. The judge has to consider
5 this advisory range in determining your sentence, but the
6 judge is not bound to sentence you within that range.
7 Means the judge can give you more time or less time, that
8 is, depart upward or downward from the advisory guideline
9 range, based on factors listed in those guidelines and
10 the sentencing statutes.

11 So it's important for you to understand,
12 Mr. Buttikofer, that the sentence ultimately imposed by
13 the judge in your case could be different from what those
14 guidelines suggest that it should be, and your sentence
15 could be different from what Mr. Eisenberg may have
16 estimated or predicted that you would receive, and it
17 could be all the way up to the statutory maximum sentence
18 which in your case is 20 years' imprisonment without the
19 possibility of parole. Do you understand all that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You should also understand that
22 you'll be in custody for all of any prison sentence that
23 you receive reduced only by any credit you might earn for
24 good behavior while you're in prison. You could earn
25 some percentage off your sentence for good behavior, but

1 you won't be seeing a parole officer, and you won't be
2 paroled early out of prison because there is no parole in
3 the federal court system. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor. Does the jail
5 time that I'm serving now because I've been in there
6 for -- since April, does that count as like a day-for-day
7 kind of a thing or . . .

8 THE COURT: Mr. Eisenberg's nodding his head,
9 and I generally agree with that, that you're going to get
10 credit against your sentence for the time that you've
11 spent so far. Is that correct, Mr. Eisenberg?

12 MR. EISENBERG: I'd agree with that, Judge.

13 THE COURT: Are you a U.S. citizen?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: This is a felony offense, so as a
16 result of this conviction, you'll lose the right to vote,
17 to hold public office, to serve on a jury, and to possess
18 firearms and ammunition. Do you understand the loss of
19 citizenship rights associated with your felony
20 conviction?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Now, I mentioned that after you
23 served your prison sentence you'll be placed on
24 supervised release. In this case it could be for the
25 rest of your life. And during that time your conduct

1 will be monitored by a United States probation officer.

2 At the time of your sentencing the judge will impose
3 certain conditions on your supervised release. There are
4 some standard conditions that apply in everybody's case,
5 things like you can't commit a federal, state, or a local
6 crime, and you can't possess or use controlled
7 substances. The sentencing judge will likely impose some
8 other conditions on you as well.

9 So it's important for you to understand,
10 Mr. Buttikofer, that while you're on supervised release
11 you have to comply with all of the terms of that
12 supervised release because if you violate any of them,
13 the judge could revoke that supervised release and send
14 you back to prison for all of the time you would
15 otherwise be on supervised release. And the judge
16 doesn't have to give you any credit for any time you
17 might have served on supervised release without having
18 any violations. Do you understand all that?

19 THE DEFENDANT: I do -- yes, I do understand,
20 Your Honor. I had -- can you ever get the right to vote
21 back, or is it no?

22 THE COURT: I wouldn't count on it. There are
23 some procedures that you can apply for to get your voting
24 privileges back. But I guess I wouldn't be pleading
25 today if I were you or relying on --

1 THE DEFENDANT: It was just a question. I'm
2 sorry.

3 THE COURT: Okay. I didn't -- if you wanted to
4 take more time to talk to Mr. Eisenberg about your
5 vote -- possible voting rights, we can do that.

6 THE DEFENDANT: No, no, that's okay.

7 THE COURT: As a result of this conviction,
8 you'll be required to register as a sex offender with the
9 national registry of sex offenders, and you'll likely be
10 required to register as a sex offender under the laws of
11 the state where you live. Such registration may be
12 required of you for the rest of your life. Do you
13 understand that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: As a result of this conviction,
16 your plea agreement, you'll be required to pay
17 restitution to any victims in this case. Do you
18 understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: As a result of this conviction and
21 your plea agreement, you'll be required to forfeit any
22 right, title, or interest you have in the property
23 subject to forfeiture in this case which I understand it
24 is an iPhone which you're accused of accessing the
25 child -- accessing the child pornography on. Do you

1 understand that you're going to be giving up your right
2 to that property, there's not going to be a hearing,
3 there's not going to be a trial in front of a judge or a
4 jury? You're just giving up your right to that property?

5 THE DEFENDANT: Yes, Your Honor. I understand
6 that.

7 THE COURT: Ms. Dupuich, are you aware of other
8 collateral consequences that could arise as a result of
9 the defendant's guilty plea you'd like me to discuss with
10 him?

11 MS. DUPUICH: No, Your Honor, other than the --
12 there is a partial waiver of his right to appeal, and I
13 wasn't sure if Mr. Eisenberg wanted to make a brief
14 record on that. But it is addressed in paragraph 30 of
15 the plea agreement.

16 THE COURT: Okay. I'll get to that here in a
17 minute.

18 MS. DUPUICH: Thank you.

19 THE COURT: Mr. Buttikofer, if you plead guilty
20 here today, I'm going to order a presentence
21 investigation. A probation officer will conduct a
22 thorough investigation of this case and of your
23 background to draft a presentence investigation report.
24 Both you and the government will receive a copy of that
25 report, and it's important that you go over it carefully

1 with Mr. Eisenberg and that you point out any errors or
2 omissions that you notice so he can bring those to the
3 attention of the probation office and get them corrected
4 because when it comes time for your sentencing, the judge
5 is going to rely on that report to determine the most
6 appropriate sentence for you. So it's in your interest
7 to make sure it's accurate.

8 When that report's final, the court will schedule
9 your sentencing hearing, and at that sentencing hearing,
10 both you and the government can present evidence, and
11 you'll be given a chance to talk directly to the judge.
12 And you can tell the judge anything you think is
13 important to consider in determining your sentence. Do
14 you have any questions about the sentencing procedures
15 that would follow a guilty plea in this case?

16 THE DEFENDANT: No, Your Honor, I do not.

17 THE COURT: Now, generally both you and the
18 government have a right to appeal the sentence to the
19 Eighth Circuit Court of Appeals. In this case, however,
20 as part of your plea agreement, you've waived certain
21 rights to appeal except under the limited circumstances
22 set forth in paragraph 30 of the plea agreement. Do you
23 understand that as part of your plea agreement you're
24 waiving certain rights to appeal?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Mr. Buttikofer, if you plead guilty
2 and the district court judge accepts that guilty plea,
3 you'll have no right to withdraw that guilty plea later
4 even if you change your mind or even if you're unhappy
5 with the sentence ultimately imposed by the judge. Do
6 you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Has anybody forced, pressured, or
9 threatened you in any way to get you to plead guilty or
10 made any promises to get you to plead guilty other than
11 what's in the plea agreement?

12 THE DEFENDANT: No, Your Honor.

13 THE COURT: Mr. Eisenberg, do you believe a
14 guilty plea in this case would be voluntary?

15 MR. EISENBERG: I do, Your Honor.

16 THE COURT: Do you know of any legal reason why
17 the plea should not be accepted?

18 MR. EISENBERG: No, sir, but I did have some
19 clarifications on one other paragraph in this plea
20 agreement that I wanted to address.

21 THE COURT: Please do.

22 MR. EISENBERG: I'm sorry. I didn't mean to
23 interrupt you. Whenever you want to.

24 THE COURT: Now's a good time.

25 MR. EISENBERG: Okay. Paragraph 22, the

1 statement reads that he is abandoning any and all claims
2 seized by law enforcement -- what they seized from his
3 house, and really the only issue is the cellphone. There
4 was also a MacBook Pro which Miss Dupuich and I have
5 agreed would be returned to his mother, and anything that
6 was the mother's would also not be forfeited. And I do
7 see that as -- in the fourth line there, is not
8 forfeiting anything of a third party. But I want to make
9 sure that we have that on the record that really the only
10 thing he used for this was the cellphone.

11 THE COURT: Anything you want to make -- record
12 you want to make with respect to that issue, Ms. Dupuich?

13 MS. DUPUICH: That's all true.

14 THE COURT: Do you understand that,
15 Mr. Buttikofer?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. Mr. Eisenberg, do you know
18 of anything the Court has omitted which could affect the
19 validity of the plea?

20 MR. EISENBERG: I don't think so, Your Honor.

21 THE COURT: Ms. Dupuich, do you know of
22 anything the Court has omitted which could affect the
23 validity of the plea?

24 MS. DUPUICH: No, Your Honor.

25 THE COURT: Well, Mr. Buttikofer, we've covered

1 lots of information this morning, and I want to take just
2 a moment to be sure that you understood it so you don't
3 come back next week or next month or next year and say
4 that you didn't understand something or that somebody
5 forced or pressured you to plead guilty. Have you been
6 able to understand everything we've talked about?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you have any questions about any
9 of it?

10 THE DEFENDANT: No, no, I do not, Your Honor.

11 THE COURT: Has anyone forced or pressured you
12 to plead guilty?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Is your decision to plead guilty a
15 voluntary decision?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Then formally and for the record,
18 how do you plead to Count 3 of the superseding indictment
19 which charges you with the crime of accessing child
20 pornography? Guilty or not guilty?

21 THE DEFENDANT: Guilty, Your Honor.

22 THE COURT: The record will reflect that the
23 defendant has pleaded guilty to Count 3 of the
24 superseding indictment.

25 I find that the defendant is competent, he fully

1 understands the charge against him, there's a factual
2 basis for his plea, he knows the maximum punishments that
3 could be imposed on the charge, and he knows his jury
4 rights and he's voluntarily waived those rights.

5 I further find that the defendant's decision to
6 plead guilty was voluntary, knowing, and not the result
7 of any force, pressure, threats, or promises other than
8 the promises made by the government in the plea
9 agreement.

10 Therefore, I conclude the defendant should be found
11 guilty based on his plea of guilty.

12 I also find there is a requisite nexus established
13 between the crime of conviction and the property subject
14 to forfeiture in this case.

15 I will sign and file a report and recommendation
16 recommending that the district court judge accept the
17 defendant's guilty plea.

18 The parties have 14 days from the filing of my
19 report to file objections to it. If no objection is
20 made, then the district court judge may accept my
21 recommendation and the defendant's guilty plea by simply
22 entering a written order doing so. I hereby order a
23 presentence investigation.

24 Mr. Buttikofer, as I mentioned, the court will
25 schedule your sentencing hearing in this case for a later

1 date. In the meantime you'll remain detained. Do you
2 have any questions about anything we've discussed here
3 today?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Good luck to you.

6 Is there anything further on behalf of the United
7 States?

8 MS. DUPUICH: We'll be happy to file the
9 updated plea agreement today. Thank you, Your Honor.

10 THE COURT: Thank you. Anything further on
11 behalf of the defendant, Mr. Eisenberg?

12 MR. EISENBERG: Judge, in your jurisdiction, I
13 don't know what the procedure is for the presentence
14 writer. Does he con -- or she -- he or she contact me
15 and we sit down together to do the background information
16 on the presentence report because in other jurisdictions
17 I've been allowed to be present?

18 THE COURT: I don't typically get involved in
19 that process, but I assume that you can be involved in
20 it, and I suggest you just contact United States
21 Probation Office, and they can give you information about
22 how it usually works.

23 Anything else, Mr. Eisenberg?

24 MR. EISENBERG: Is there an agent there now,
25 Judge?

1 THE COURT: There is not.

2 MR. EISENBERG: Okay. All right. I will do
3 that. Thank you very much.

4 THE COURT: Thank you all. That will conclude
5 our hearing.

6 (The foregoing plea was
7 concluded at 10:38 a.m.)

8 * * * *

9 (This concludes the transcript of the audio recording.)
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20 CERTIFICATE

21 I certify that the foregoing is a correct
22 transcript to the best of my ability from the digital
23 recording of proceedings in the above-entitled matter.

24 S/Shelly Semmler 9-28-21
25 Shelly Semmler, RDR, CRR Date

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